6-141

Moug

Mar 20. 78 Clerk

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 606.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

HENRY HERMAN, CHARLES STERNBACH, AND JOHN W. ENTZ.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED NOVEMBER 7, 1876.

SU

CI

HI

IN

Wi
Cl
De
De
Ju
Bi
As
Ch
Jo

SUPREME COURT OF THE UNITED STATES.

No. 606.

CHESTER A. ARTHUR, COLLECTOR OF THE PORT OF NEW YORK, PLAINTIFF IN ERROR,

vs.

HENRY HERMAN, CHARLES STERNBACH, AND JOHN W. ENTZ.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Writ of error	1	1
Clerk's certificate	2	1
Declaration	5	2
Defendant's plea	8	4
Judgment	11	5
Bill of exceptions	13	5
Assignment of errors	22	8
Citation	24	8
Joinder	26	9

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the southern district of New York, greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court before you, between Henry Herrman, Charles Sternbach, and John W. Entz, plaintiffs, and Chester A. Arthur, defendant, a manifest error hath happened, to the great damage of the said Chester A. Arthur, as by his complaint appears: We being willing that the error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington on the third Monday of October term, eighteen hundred and seventy-six, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done thereon to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

The foregoing writ is hereby allowed.

ALEX. S. JOHNSON, *Cir. J.*

2 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Henry Herrman, defendant in error. Writ of error.

Service admitted Oct. 16th, 1876.

STANLEY, BROWN & CLARKE,
Att'y' for Herrmann et al.

Filed Oct. 17th, 1876.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from three to twenty-five inclusive, contains a true and complete transcript of the record and proceedings had in said court in the case of Chester A. Arthur, plaintiff in error, against Henry Herrman, Charles Sternbach, and John W. Entz, defendants in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this first day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the said United States the one hundred and first.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

3 Circuit court of the United States for the southern district of New York.

Pleas before the judge at the circuit court of the United States of America for the southern district of New York, in the second circuit, at the U. S. court-rooms, in the city of New York, of the term of April, in the year of our Lord one thousand eight hundred and seventy-three.

Witness, the honorable Ward Hunt, judge of the said court.

KENNETH G. WHITE, *Clerk.*

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Be it remembered that heretofore, to wit, in October term, 1872, of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the U. S. court-rooms in the city of New York, in the said district, before the judge of the said court, came Henry Herrman, Charles Sternbach, and John W. Entz, copartners doing business under the firm-name of H. Herrman &
4 Co., by Stanley, Brown & Clarke, their attorneys, and brought then and there into the said court, before the judge thereof, their certain declaration against Chester A. Arthur of a plea of trespass on the case for promises; which said declaration follows in these words, that is to say:

5 THE UNITED STATES OF AMERICA:

Circuit court of the United States for the southern district of New York, in the second circuit of the October term, in the year one thousand eight hundred and seventy-two.

HENRY HERMAN ET AL.
vs.
CHESTER A. ARTHUR.

Henry Herman, Charles Sternbach, and John W. Entz, copartners doing business under the firm-name of H. Herman & Co., plaintiffs in this suit, come into court, and by Stanley, Brown & Clarke, their attorneys, give the court now here to be informed that heretofore, to wit, on the thirteenth day of December last past, this action was commenced in the superior court of the city of New York, according to the laws of the State of New York, and the rules and practice of said court, in favor of the said plaintiffs against the defendant herein, upon the causes of action hereinafter set forth, and the summons therein filed with the clerk of said court; that the defendant afterwards, by his attorney, G. Bliss, esquire, duly appeared in said action, and thereupon, on the tenth day of February, in the year one thousand eight hundred and seventy-three, the said action was duly removed by writ of certiorari for further prosecution into this court, according to the act of Congress in such case made and provided; and the clerk of the said court did thereupon return the said writ with the said summons, and duly file the same in this court, which allegations the defendant admits to be true.

Wherefore, let the further proceedings and trial in this action be continued in this court.

And the said plaintiffs, by their said attorneys, complain of said defendant of a plea of trespass on the case for promises, for that whereas said defendant, on 12th day of December, eighteen hundred and seventy-

two, at New York City, in the district aforesaid, was indebted to said plaintiffs in the sum of seven hundred and $\frac{99}{100}$ dollars, lawful money of the United States of America, for duties on merchandise, to wit, animal-hair goods, imported into, and entered at the collection district of the United States for the city of New York, on or about the twenty-eighth day of July, 1872, and at divers other days and times thereafter, and until the 1st day of December, in the year one thousand eight hundred and seventy-two, in the following vessels, to wit: City of New York, City of Brooklyn, Scotia, City of Montreal, Parthia, City of Paris, Russia, Scotia, Calabria, Cuba, and divers others, from Liverpool, unlawfully demanded, exacted, and received at said New York City by the said defendant, then collector of the customs for said district, under color of a law of the United States for the collection of duties on imports, and paid by the said plaintiffs under protest and appeal in writing in due form of law.

And being so indebted he, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money when he, said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year last aforesaid, at the place aforesaid, was indebted to the said plaintiffs in the further sum of one thousand dollars, lawful money of the United States of America, for money before that time lent and advanced by said plaintiffs to said defendant, and at the special instance and request of the said defendant. And for other money by the said plaintiffs before that time paid, laid out, and expended for the said defendant, and at the like request of the said defendant. And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs. And being so indebted, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this count mentioned, when he should be thereunto afterwards requested.

Nevertheless, said defendant, although often afterwards requested so to do, has not paid said sums of money, or any or either of them, or any part thereof, to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs has hitherto refused, and still does refuse, to the damage of the said plaintiffs of one thousand dollars; and therefore the said plaintiffs bring suit, &c.

STANLEY, BROWN & CLARKE,
Attorneys for the Plaintiffs.

6 (Indorsed:) U. S. circuit court. Henry Herman et al. vs. Chester A. Arthur. Declaration.

To GEO. BLISS, J'r, *Def't's Att'y:*

SIR: Please take notice that a rule has been entered in the book of common rules in the office of the clerk of this court, at the city of New York, requiring the defendant to plead to the declaration in twenty days after service of a copy thereof and notice of said rule on his attorney, or judgment, &c.

New York, September 2, 1873.

STANLEY, BROWN & CLARKE,
Attorneys for Plaintiffs, 16 Wall Street.

Due service of a copy of within declaration and above notice is hereby admitted this 9th day of September, 1873.

GEO. BLISS,
Def't's Att'y.

7 And the said Chester A. Arthur, defendant in this suit, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c.

8 *Plea.*

United States circuit court, southern district of New York.

CHESTER A. ARTHUR
ads.
HENRY HERRMAN & AL.

And the said defendant, Chester A. Arthur, by George Bliss, his attorney, comes and defends the wrong and injury, when, &c., and says that he did not undertake and promise in manner and form as the said plaintiffs in this suit have above thereof declared against the said defendant, and of this he puts himself upon the country; and the said plaintiffs do the like, &c.

GEO. BLISS,
Defendant's Attorney.

To STANLEY, BROWN & CLARKE, Esq's.,
Plaintiffs' Attorney'.

9 (Endorsed:) U. S. circuit court. C. A. Arthur ads. H. Herrman & al. Plea. Geo. Bliss, attorney for defendant.

You will please take notice that the plea of the defendant in the above cause, of which the within is a copy, was this day filed in the office of the clerk of the U. S. circuit court for the southern district of New York.
New York, Sept. 23, 1873.
Yours, &c.,

GEO. BLISS,
Defendant's Attorney.

To STANLEY, BROWN & CLARKE, Esq.,
Plaintiffs' Attorney', 16 *Wall St.*

10 Therefore the issue above joined is ordered by the said court to be tried at the term of the said court appointed to be held at the city of New York on the third Monday of October in the year 1875.

And now, at this day, to wit, the third day of December, 1875, being as yet of the said October term, before the Hon. Nathaniel Shipman, district judge of the United States for the State of Connecticut appointed to hold the said circuit court, according to the form of the statute in such case made and provided, at the United States court-rooms in the said city of New York, came the said plaintiffs by their attorneys aforesaid, and the said judge before whom the said issue was tried has sent hither his record had before him in these words, to wit:

Afterwards, that is to say, on the day and at the place before mentioned, before the judge of the said court came as well the above-named plaintiffs as the above-named defendant, by their respective attorneys

aforesaid, and the jurors of the jury summoned to try the said is-
11 sue being called also came, who to speak the truth of the matters aforesaid being chosen, tried, and sworn, say upon their oath that the defendant did undertake and promise in manner and form as the said plaintiffs hath above complained against him; and they assess the damages of the said plaintiffs by reason of the premises over and above their costs and charges by them about their suit in this behalf expended to the sum of one hundred and thirty-five $\frac{13}{100}$ dollars, gold, and for their costs and charges to six cents. Therefore it is considered that the said plaintiffs do recover against the said defendant their said damages, costs, and charges, by the jurors aforesaid, in form aforesaid, assessed, and also one hundred and forty-five $\frac{85}{100}$ dollars in currency for their costs and charges by the court here adjudged of increase to the said plaintiffs with their assent, which said damages, costs, and charges in the whole amount to one hundred and thirty-five dollars and thirteen
12 cents in gold and one hundred and forty-five $\frac{85}{100}$ dollars in currency.

And said defendant in mercy, &c.

Judgment signed this 31st day of December, 1875.

R. E. STILWELL,
Dep. Clerk.

(Endorsed:) U. S. circuit court, southern district of N. Y. Henry Herrman et al. vs. Chester A. Arthur. Judgment record. Stanley, Brown & Clarke, pl'ffs' att'ys, 16 Wall st. Filed Jan'y 4, 1876.

13 *Proposed bill of exceptions.*

United States circuit court, southern district of New York.

HENRY HERRMAN, CHARLES STERNBACH, AND John W. Entz,
vs.
CHESTER A. ARTHUR.

And afterwards the said action came on to be tried at a stated term of the United States circuit court for the southern district of New York, before the Hon. Nathaniel Shipman, district judge, sitting as circuit judge, and a jury empanneled therein, on the 1st day of December, 1875, in October term, 1875, the respective parties being represented by their counsel. And said trial was continued before said court and jury until the 3rd day of December, 1875, in the same term,
14 on which day the jury rendered a verdict for the plaintiffs as hereinafter stated. And in the course of said trial and before the rendering of the verdict therein, counsel for the defendant did take and allege sundry exceptions to the rulings of the court, and to its refusal to direct a verdict for the defendant, and to its charge and direction to the jury, and its refusal to charge as requested by defendant; which said several exceptions are hereinafter severally set forth.

To maintain the issues on the part of the plaintiffs, evidence was given tending to show that in the year 1872, the plaintiffs' firm imported from foreign countries importations into the port of New York, on which duties were assessed by the defendant, as collector of the said port, at and after the rate of 35 per centum ad valorum, which said duties were paid under protest, the protest being in form as hereinafter set forth.

Evidence was further given tending to show that the goods on which said protest was made, and concerning which this action was brought, were manufactured at or near Huddersfield, England; that they
15 were of a cheap quality; that the warp of said goods was made of cotton, and the filling-in or woof was made of cattle-hair, being cow-hair or calf-hair, or both, and in various respective proportions, according to the particular sample of the goods. Samples of goods were produced by plaintiffs, some of whose witnesses stated that said samples were similar to those in the imported packages in question.

The plaintiffs' witnesses further testified that there was no other component material in said goods, except cotton and cow or calf hair; and further that there was no wool in the said goods. The said goods were in fact used for coarse cloakings and similar purposes. The plaintiffs claim that the said goods were not dutiable at 35 per cent., but at a less rate, viz, 90 per cent. of 35 per cent. ad valorem, under section 2 of the act of June 6th, 1872, by virtue of which the plaintiffs claimed that the goods in question were only liable to the lowest above-
16 named rate of duty and should not have paid 35 per cent. ad valorem.

The protest above referred to and relied upon by plaintiffs upon the importation by the steamer City of Montreal, one of those specified in the bill of particulars, was in form as follows:

Protest against liquidation of entry and payment of duty.

NEW YORK, *Nov'r 12th*, 1872.

TO COLLECTOR OF CUSTOMS,
Port of New York.

SIR: We do hereby give you notice, pursuant to the requirement of the 14th section of the act, entitled "An act to increase duties on imports, and for other purposes," approved 30th June, 1864, of our dissatisfaction at your decision and liquidation of our entry per steamer City of Montreal from Liverpool, made in your office on or about the 29th October, 1872, for $\frac{H}{B}$ ✕ 3552 & 3555; two packages merchandize composed wholly or in part of animal hair, at the rate of duty
17 at thirty-five per centum ad valorem.

The ground of our dissatisfaction, objection, and protest, both against said liquidation and against any and every payment which we may be required to make, or may make thereunder is, that the merchandize aforesaid is only liable under existing laws to a duty of ninety per centum of thirty-five per centum ad valorem, under the 2d sec. act of 6th June, 1872, being merchandize composed of animal hair and cotton.

We shall hold you responsible for the difference between ninety per centum of thirty-five per centum ad valorem, the legal rate of duty for the goods referred to above, and the illegal rate of thirty-five per centum ad valorem, claimed by you on the decision and liquidation before stated. In paying the amount thus illegally exacted we do so only for the purpose of obtaining or retaining the possession of our property.

H. HERRMAN & CO.,
P'r ISAAC PHILLIPS,
Attorney.

18 No objection was taken to the sufficiency of this protest.

The protests upon the other importations specified in the bill of particulars, so far as they were received by the court and passed upon in plaintiff's favor, were also in the form and to the purport above set forth. In respect to protest, appeal from the collector's decision to the Secretary of the Treasury, decision by the Secretary, and time within which suit must be brought upon such of the importations as, under the ruling of the court in plaintiffs' favor, were involved in this action, the requirements of section 14 of the act of June 30th, 1864, were so far complied with as to entitle the plaintiffs to recover the amount of one hundred and twenty-seven and $\frac{48}{100}$ dollars principal in coin and twenty-seven and $\frac{65}{100}$ dollars interest in currency, in case a recovery could be had on any of said importations.

Plaintiffs conceded that the cotton in said goods was not the
19 component material of chief value. A large amount of testimony having been given by the plaintiffs in respect to the component materials of the goods in question, as above set forth, the plaintiffs rested.

The defendant offered no testimony. The testimony being closed, the defendant moved that the court direct a verdict for the defendant or dismiss the action upon the ground that no cause of action had been made out, and that the goods were not liable to the reduced rate of duty provided by the act of June 6th, 1872, inasmuch as it had appeared affirmatively without contradiction by the witnesses called for plaintiffs that cotton was not, in any of the goods in question, the component material of chief value. The court, after argument, denied the motion of the defendant and defendant's counsel duly excepted.

Plaintiffs' counsel then moved that the court direct a verdict for the plaintiffs, which motion, there being no question of fact in the case so presented, and the one question as presented being one of law,
20 the court granted, and thereupon directed the jury to find a verdict for the plaintiffs for the sum of one hundred and twenty-seven and $\frac{48}{100}$ dollars principal in coin, and twenty-seven and $\frac{65}{100}$ dollars interest in currency, to which ruling and direction defendant's counsel duly excepted.

The jury thereupon rendered a verdict for the plaintiffs as directed.

And inasmuch as the aforesaid matters of fact and law and the said several exceptions do not appear by the record of said trial and verdict, therefore, on the prayer of said defendant by his counsel, the said judge has signed the foregoing bill of exceptions this 3 day of December, 1875, at the October term of said court as aforesaid.

N. SHIPMAN, *Judge.*

21 (Indorsed:) U. S. circuit court southern district of New York. Henry Hermann versus Chester A. Arthur. Bill of exceptions. George Bliss, United States attorney for the southern district of New York. Filed Sept. 28, 1876.

Due service of a copy of the within proposed bill of exceptions is hereby admitted.

Dated Jan'y 19, '76.

STANLEY, BROWN & CLARKE,
Att'ys for Pl'ffs.

22 Supreme Court of the United States, of October term, in the year of our Lord one thousand eight hundred and seventy-six.

CHESTER A. ARTHUR, PLAINTIFF IN ERROR,
ag'st
HENRY HERMAN, CHA'S STERNBACH & JOHN W. ENTZ, defendants in error.

Afterwards, to wit, on the third Monday in said term, before the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, comes the said Chester A. Arthur, by Geo. Bliss, his attorney, and says, that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid there is error in the several rulings of the court to which exception has been taken and that by the record aforesaid it appears that judgment aforesaid, in form aforesaid given, was given for the said defend-
23 ants against the said plaintiff, whereas by law of the land the said judgment ought to have been given for the said plaintiff in error against the said defendants in error, and the said plaintiff prays that the judgment aforesaid for the errors aforesaid, and other errors in the record and proceedings aforesaid, as the same appear more fully therein, may be reversed, annulled, and altogether held for nothing, and that he, the plaintiff, may be restored to those things which he has lost by reason of said judgment.

GEO. BLISS,
U. S. Att'y, for Pl'tiff in Error.

(Endorsement:) U. S. Supreme Court. Southern district of New York. Chester A. Arthur, pl'tiff in error, versus Henry Herman et als., def'ts in error. Assignment of error. George Bliss, United States attorney for the southern district of New York. Filed Nov. 1, 1876.

24 UNITED STATES OF AMERICA, *ss:*

To Henry Herman, Charles Sternbach, and John W. Entz, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the third Monday of October term, eighteen hundred and seventy-six, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Chester A. Arthur is plaintiff and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this eleventh day of October, in the year of our Lord one thousand eight hundred and seventy-six.

ALEX. S. JOHNSON, *Cir. J.*

25 (Indorsed:) U. S. Supreme Court. Chester A. Arthur, plaintiff in error, against Henry Herman et als., defendant' in error. Citation.

Service admitted Oct. 16th, 1876.

STANLEY, BROWN & CLARKE,
Att'ys for Herrman et al.

Filed Oct. 17, 1876.

CHESTER A. ARTHUR, PL'FF IN ERROR,
vs.
HENRY HERRMAN, CHARLES STEINBACH, & JOHN W. ENTZ, def'ts in error.

And afterwards, to wit, on the third Monday of October, in October term, in the year of our Lord one thousand eight hundred and seventy-six, the said Henry Herman, Charles Steinbach, and John W. Entz, by their attorney, freely come here into court, and say that there is no error either in the record or proceedings aforesaid, or in the giving of the judgment aforesaid, and they pray that the said Supreme Court of judicature, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given may be in all things affirmed, &c.

STANLEY, BROWN & CLARKE,
Att'ys for Def't in Error.

STEPHEN G. CLARKE,
Of Counsel for Def'ts in Error.

(Indorsed:) 920. 1876, Octo. term. U. S. Supreme C't. No. 929. Chester A. Arthur, pl'ff in error, vs. Henry Herrman et al. Joinder in error. Stanley, Brown & Clarke, att'ys for def'ts in error, 16 Wall st., N. Y. Filed 21 November, 1876.

(Indorsement on cover:) No 606. Chester A. Arthur, collector of the port of New York, plaintiff in error, vs. Henry Herman, Charles Sternbach, and John W. Entz. S. New York C. C. U. S. Filed 7th November, 1876.

REC. 606—2

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &C.,
PLAINTIFF IN ERROR,
vs.
HENRY HERMAN AND OTHERS.

No. 606.

BRIEF FOR PLAINTIFF IN ERROR.

In the Supreme Court of the United States.

OCTOBER TERM, 1877.

CHESTER A. ARTHUR, COLLECTOR, &c.,
PLAINTIFF IN ERROR,
vs.
HENRY HERMAN AND OTHERS.

No. 606.

BRIEF FOR PLAINTIFF IN ERROR.

This was an action to recover money exacted for excessive duties, as was alleged.

The bill of exceptions will be found upon pages 5, 6, and 7 of the record.

The question is, whether importations in 1872 of goods *composed of a warp of cotton and woof of cow-hair or calf-hair, or both, in which cotton was not the component material of chief value,* are entitled to the benefit of the provision in the act of 1872, chapter 315, section 2 (17 Stat. at L., 231, near bottom), by which only *ninety per centum* of the duties theretofore laid were payable "on all wools, hair of the alpaca, goat, and other animals, *and all manufactures wholly or in part of wool,* or *hair of the alpaca and other like animals, except as hereinafter provided.*"

The importer asserts that they are so entitled, and this is denied by the Government.

For *error*, I assign the direction below, that the jury find a verdict for the importer, and the judgment given in accordance therewith.

Reading the above provision alone, it appears that a distinction exists in the two clauses between *hair* and *manufactures of hair*. In the former *apparently* the hair of all animals is included; in the latter only the hair of alpacas and *like* animals.

A doubt is suggested, however, upon the face of the provision, whether there were any reasons for drawing the supposed distinction; *i. e.*, whether the word *like* was not *omitted* by clerical error from the former clause, or, by like error, was not *inserted* in the latter. If the case had no more in it than this, I understand it to be a rule in *diplomatics* that an omission is rather to be presumed than an insertion. Inadvertence in copyists, &c., is more apt to produce the former fault than the latter.

However, it appears from a subsequent clause in the statute (section 4, p. 235, latter half) that "Hair—all horse, cattle, cleaned or uncleaned, drawn or undrawn, but unmanufactured," is not included in the expression *hair of other animals* in the former clause of the provision first above quoted. The word *like*, therefore, as above suggested, has probably been omitted therefrom. See to the same effect the like provisions in the acts of 1864, ch. 171, secs. 4 and 5 (13 Stat., 206 and 207), and 1867, ch. 197, secs. 1 and 2 (15 Stat., 559 and 561).

Upon the whole, it seems plain that the word *like* in the second clause is significant, and therefore that the manufacture of the hair of cows and calves is not included in such clause.

Therefore, the tax previously imposed, viz, 35 per centum, remains unaffected by the act of 1872.

S. F. PHILLIPS,
Solicitor-General.

S. Hamilton's Son, Printer, 61 Cedar Street, N.Y.

In the Supreme Court.

CHESTER A. ARTHUR, Collector, &c.,
Plaintiff in Error,

vs.

HENRY HERRMAN, *et al.*,
Defts. in Error.

No. 606.

BRIEF FOR DEFENDANTS IN ERROR.

STATEMENT.

The defendants in error imported goods composed of cotton and cow or calf hair. These goods were not specifically enumerated in the tariff Acts then in force.

It was conceded that cotton, although constituting a large portion of the material, to wit, the warp, was not in fact the component of greater pecuniary value.

The statutes to be construed are that portion of the Act of June 30, 1864, sect. six, providing for non-enumerated manufactures of cotton, (13 Stat.

at Large, 202;) that portion of section two, Act of June 6, 1872, (17 Stat. at Large, 230), containing provisions as to all manufactures of cotton of which cotton is component of chief value; and section twenty of the Act of Aug. 30, 1842, (5 Stat. at Large, 548), generally called the Similitude Act.

POINTS.

The provisions of section twenty of the Act of 1842, have been held to be permanent in their character, and in cases where applicable furnishing a rule of construction determining under what schedule or dutiable classification a given article will fall.

Stuart *vs.* Maxwell, 16 How., 150;
Marlot *vs.* Lawrence, 1 Blatchf., 608;
Ross *vs.* Peaslee, 2 Curt. C. C., 499;
Smythe *vs.* Fiske, 23 Wall., 374, 381.

In the former case Justice Curtis delivering the opinion of the Court, says, page 160, "In the first place it must be observed that the 20th section of the Act of 1842 does not impose any particular rate of duty upon imports. It was designed to afford rules to guide those employed in the collection of the revenue in certain cases likely to occur, not within the letter, but within the real intent and meaning of the laws imposing duties," and again suggesting if the tariff Act of 1846 had re-enacted this section, he says, "This section would then only have afforded a rule by which it could be determined that certain articles did substantially belong to, and were to be reckoned as coming under a particular schedule."

The particular facts of this case are also of interest.

Under the tariff act of 1846 a duty of twenty per cent. was imposed on unenumerated articles, and a duty of twenty-five per cent. on not otherwise enumerated manufactures of cotton. Plaintiffs im-

ported a non-enumerated article composed of linen and cotton, and claimed them to be duitable at twenty per cent.' The Collector assessed twenty-five per cent. Says Justice Curtis, page 159: "If these articles are for the purpose of fixing the amount of duty deemed by law to be manufactures of cotton, it is not denied that the duty was rightly assessed. And whether they are to be so reckoned and treated depends upon the question whether the 20th section of the act of 1842 was repealed by the tariff act of 1846." It was held not to be repealed and the cotton duty rightly assessed. So in the present case.

The goods imported by the defendants in error were a non-enumerated manufacture, and as such, putting the act of 1842 one side, liable to a duty of twenty per cent. only. But applying the act of 1842 they became, just as in the case of Stuart *vs.* Maxwell, "for the purpose of fixing the amount of duty deemed by law to be manufactures of cotton," and more specifically one of the general manufactures of cotton not otherwise provided for.

To ascertain then the true and correct rate of duty upon the goods imported by defendants in error, we have only to ascertain what the rate of duty was upon such manufactures of cotton at the time of the importation in question.

The two acts affecting cotton goods then in force are the ones before cited.

The Act of 1864 imposed a duty of thirty-five per cent. on all manufactures of cotton not otherwise provided for.

The Act of 1872 provided that on certain articles therein enumerated there should be levied only ninety per centum of existing duties, and among other articles, "on all manufactures of cotton of which cotton is the component part of chief value."

The duty then on manufactures entirely of cotton is ninety per cent. of thirty-five per cent., or thirty-one and-a-half per cent.

Applying the Act of 1842 as a rule of construction under the interpretation of Stuart *vs.* Maxwell, how can a greater rate of duty than thirty-one and-a-half per cent. be levied upon the goods in question.

In other words the importations in question were assessed, by virtue of section 20 of the Act of 1842, as manufactures of cotton at thirty-five per cent.; but, by the the Act of 1872, the duty on manufactures of cotton was but ninety per cent. of thirty-five per cent., therefore the duty on these goods should have been assessed at that rate.

STEPHEN G. CLARKE,

WM. STANLEY,

Of counsel for def'ts in error.